

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6796 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VAJESING RAMTUBHAI

Versus

STATE OF GUJARAT

Appearance:

MR BK DAVE for Petitioner

Mr. C.C.Bhalja, ASSTT. GOVERNMENT PLEADER for
the Respondent

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 10/08/98

ORAL JUDGEMENT

By means of this petition, the petitioner has sought to quash the order dated 29.6.1983 dismissing the petitioner from service and the order dated 10.8.84 of the appellate authority dismissing the appeal of the petitioner and confirming the finding of the disciplinary

authority, order dated 10.4.85 passed by the Director General of Police, Gujarat State, rejecting the Review Application of the petitioner and the order dated 18.9.86 passed by the Government of Gujarat, Home Department dismissing the Revision Application of the petitioner.

2. The petitioner was working as police constable from 21.7.64 in the police department of the respondent State of Gujarat. On 5.6.81 at about 9.00 p.m., Natwarsinh Fulsinh, an unarmed police constable who was also serving at Nadiad and residing at Police lines alongwith his family by saying why he was not betrothing his niece in his village and the petitioner illegally entered into the room of Natwarsinh and threatened him to inflict knife injuries. The petitioner continued to give threats to the aforesaid Natwarsinh. Thereafter on 7.7.81 at about 11.15 p.m said Natwarsinh had given his complaint in writing at Nadiad town police station. The petitioner also gave threats on 6.7.81 to Puriben, wife of Bhikhabhai Ramabhai, an unarmed police constable to kill her in absence of Bhikhabhai. The petitioner was prosecuted for the incident which took place on 5.6.81 at about 9.00 p.m. wherein the petitioner was alleged to have entered into the room of the complainant Natwarsing alongwith a knife in his hand and intended to cause him injuries and tried to cause him injuries with the help of knife, as well as abused him and threatened him to cause his death, under sections 452, 504 and 506 of IPC. The petitioner was acquitted for the said charges by the learned JMFC, Nadiad by his order dated 30.7.1983. As the disciplinary inquiry had already been initiated against the petitioner, the disciplinary authority awarded punishment of dismissal vide its order dated 29.6.83. An appeal was filed by the petitioner before the appellate authority alongwith certified copy of the judgment of the Criminal Court which acquitted the petitioner from the charges levelled against him, but the appellate authority had not considered the acquittal of the petitioner by the criminal Court. The petitioner then filed a Review Application before Director General of Police and Inspector General of Police, State of Gujarat who after considering the judgment of the criminal Court dismissed the same. The petitioner raised the following three points for decision.

1. The petitioner has been acquitted by the criminal court by its judgment dated 30.7.83. Hence, departmental inquiry cannot be initiated.
2. The fact of giving threats is not corroborated by independent and dis-interested witnesses.
3. There were contradictions regarding date of

incident which gave rise to the incident of threat to Puriben.

4. After considering the matter, the authority came to the conclusion that it is clearly mentioned that the delinquent has given threat to Puriben on 6.7.81 and that charge was proved during the departmental inquiry. The Inspector General of Police by his order dated 10.8.84 discussed the matter and the petitioner has not cared to send any reply for preliminary or final defence. The criminal court has acquitted the petitioner by giving benefit of doubt. They were criminal charges, whereas it was a departmental inquiry wherein the charge against the accused was that as a police constable in a manner which is against discipline and derogatory to the reputation of the police department and that charge was proved during the departmental inquiry.

So far as threat given to Puriben is concerned, contradictions regarding date of occurrence, the authority found it natural and during the departmental inquiry that charge was also proved. The Director General of Police and Inspector General of Police rejected the review application of the petition by an order dated 10.4.85. The petitioner preferred a Revision Application before Government of Gujarat and that application also came to be rejected exercising the powers under section 27(9) of the Bombay Police Act.

6. The learned counsel for the petitioner contended that it has been consistently held by the Supreme Court as well as by other High Courts that once an officer is charged and departmental proceedings are initiated against him in respect of the same charge, the delinquent officer is also prosecuted and the criminal court after assessing the evidence, came to the conclusion that the charges are not proved against the delinquent and he has been acquitted of the charges levelled against him, the fact findings should be considered by the department and the petitioner ought to have been reinstated as in the present case, the petitioner was charged in the departmental proceedings in respect of the threats given by the petitioner to the complainant and his wife and he was also tried in the criminal court, wherein he was not found guilty of the charges against him. He also relied on a decision in a case of State of MP vs. Saiyed Kumar Ali by a bench of five judges of the Supreme Court reported in 1967, SLR, 228 wherein a police officer was tried and acquitted by the criminal court and as a matter of rule, he was

required to be reinstated. He will not be punished by the department when the offence for which he was tried constituted the sole ground for punishment. I have given anxious thought to the suggestion made on behalf of the petitioner in the case of State of MP (Supra). The Supreme Court has considered the dismissal contrary to para-241 of Police Regulations. Para-241 of the Regulations reads as under:

"When a police officer has been tried and acquitted by a criminal court, he must as a rule be reinstated. He may not be punished departmentally when offence for which he was tried constituted the sole ground for punishment. If however, the acquittal whether in the court of original jurisdiction or of appeal was based on technical grounds, or if the facts established at the trial show that his continuation in Government service is undesirable, the District Superintendent, may take departmental cognizance of his conduct, after obtaining sanction of the Inspector General."

7. It is a well settled proposition of law that departmental proceedings and criminal proceedings in the Court can run simultaneously at one and the same time and both the departmental authorities may take a different decision against the delinquent officer from the order of the criminal court. But in view of the ratio laid down by the Supreme Court as stated above, it appears that the department should honour the decision of the Court. If he has been acquitted from the charges levelled against him and for the same charges, he is facing departmental proceedings. The learned counsel for the petitioner could not show any regulation or any provision of law wherein departmental disciplinary proceedings should have been concluded taking action of the decision of the criminal court, but as the Supreme Court has held that if charges are the same, on the acquittal of the delinquent by the criminal court, the delinquent official should have been reinstated in service. If the acquittal is not based on the technical grounds, such as lack of jurisdiction or lack of evidence or there is any finding in the departmental proceedings that the continuation of the delinquent officer in the Government service is undesirable. In the present case, the petitioner was charged in the departmental proceedings in respect of three charges.

(1) Quarrel and threats administered by the petitioner at 9.00 p.m. on 5.6.81.

(2) Continuous threat administered to Natwarsinh in respect of which complaint was filed on 7.7.81 at Nadiad Town Police station.

(3) Threats given on 6.7.81 to Smt. Puriben.

With regard to the charge nos.1 and 2, the petitioner has been acquitted by the criminal court by the judgment and order dated 30.7.83. The learned counsel for the petitioner submitted that the evidence of Bhikhabhai Ramabhai was disbelieved on the ground that in the cross-examination, he stated that he did not file any complaint to the effect that the accused used to come after consuming liquor and abused his sons. Hence, the evidence of Bhikhabhai was found of very shaky nature and has not been relied upon by the criminal court. While, on the other hand, in departmental proceedings, the evidence of Bhikhabhai was found reliable and corroborated by the evidence of his wife Puriben. The learned counsel for the petitioner submitted that in the departmental disciplinary proceedings, the judgment of the criminal court has not been given due weightage and the finding of the criminal court have been ignored only on the basis that he was given a benefit of doubt and exonerated from the charges levelled against him. The next submission in this respect is that disciplinary authority has not recorded any reasons that continuation of the petitioner in Government service was undesirable. Hence, the findings recorded by the disciplinary authorities are not sustainable in the eye of law.

7. I have carefully considered the submissions made on behalf of the learned counsel for the petitioner. As the findings recorded by the criminal court are binding on the disciplinary authority as well as appellate authority, both the authorities cannot ignore the findings of the criminal court. The authorities below have also not considered whether the evidence of Bhikhabhai regarding threats administered on 6.7.81 was reliable in view of the statement made before the criminal court. In the facts and circumstances of the case, I think it proper that the matter should be remanded to the Secretary, Home Department, Sachivalaya, Gandhinagar with a direction that he will consider the case in light of the observations made above and decide the impugned order regarding dismissal of the petitioner within a period of three months from the date of production of a certified copy of this judgment. He is also directed to consider whether the third charge is sufficient for awarding major punishment in view of the

fact that part of the evidence of Bhikhabhai has already been disbelieved by the criminal court.

The petition is disposed of accordingly with no order as to costs.

....

***darji